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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

**MARITIME COMMUNICATIONS/LAND
MOBILE, LLC**

Participant in Auction No. 61 and Licensee of
Various Authorizations in the Wireless Radio
Services

Applicant with **ENCANA OIL AND GAS (USA),
INC.; DUQUESNE LIGHT COMPANY; DCP
MIDSTREAM, LP; JACKSON COUNTY
RURAL MEMBERSHIP ELECTRIC
COOPERATIVE; PUGET SOUND ENERGY,
INC.; ENBRIDGE ENERGY COMPANY, INC.;
INTERSTATE POWER AND LIGHT
COMPANY; WISCONSIN POWER AND
LIGHT COMPANY; DIXIE ELECTRIC
MEMBERSHIP CORPORATION, INC.;
ATLAS PIPELINE – MID CONTINENT, LLC
DENTON COUNTY ELECTRIC
COOPERATIVE, INC., DBA COSERV
ELECTRIC; AND SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY**

For Commission Consent to the Assignment of
Various Authorizations in the Wireless Radio
Services

EB Docket No. 11-71
File No. EB-09-IH-1751
FRN: 0013587779

Application File Nos. 0004030479,
0004144435, 0004193028,
0004193328, 0004354053,
0004309872, 0004310060,
0004314903, 0004315013,
0004430505, 0004417199,
0004419431, 0004422320,
0004422329, 0004507921,
0004153701, 0004526264,
0004636537, and 0004604962

FILED/ACCEPTED

JUL 25 2011

Federal Communications Commission
Office of the Secretary

To: Marlene H. Dortch, Secretary
Attention: The Commission

OPPOSITION TO REQUEST FOR EXPEDITED ACTION

Warren C. Havens, Environmental, LLC, Intelligent Transportation and Monitoring
Wireless, LLC, Skybridge Spectrum Foundation, Telesaurus Holdings GB, LLC, Verde Systems,
LLC, and V2G LLC (collectively, "SkyTel"), by their attorneys, hereby oppose the Request for
Expedited Action submitted by Atlas Pipeline Mid-Continent, LLC, DCP Midstream, LP,

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Denton County Electric Cooperative, Inc., d/b/a CoServ Electric, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Interstate Power and Light Company, Jackson County Rural Electric Membership Corporation and Wisconsin Power and Light Company (collectively, the “Applicants”) in the above-captioned matter on July 15, 2011 (“Applicants’ Request”). For the reasons described below, the Applicants’ Request is repetitive, provides no basis for the requested relief, and should be dismissed without consideration.

On April 19, 2011, the Commission issued an Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing in the above-captioned proceeding (the “Hearing Designation Order”).¹ The Hearing Designation Order designated for hearing before an Administrative Law Judge questions concerning, among other things, the qualifications of Maritime Communications/Land Mobile, LLC (“Maritime”) to be a Commission licensee, and whether its licenses should be revoked. Maritime has a number of pending assignment of license applications seeking to assign certain spectrum rights to the Applicants, as well as to other parties.

In footnote 7 of the Hearing Designation Order, the Commission stated that it would, upon an appropriate showing, consider whether to remove the Southern California Regional Rail Authority (“SCRRA”) from the hearing proceeding. Since the release of the Hearing Designation Order, the Applicants have been relentless in their pursuit “me, too” relief that would allow them to submit a similar showing seeking removal from the ambit of the Hearing

¹ *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, EB Docket No. 11-71, FCC 11-64 (rel. April 19, 2011) (“Hearing Designation Order”).

Designation Order. The Applicants' Request is merely their latest attempt to limit or mitigate the effects of the terms of the Hearing Designation Order as to their interests.

The thrust of all of the Applicants' filings on this subject is that it is somehow unfair to allow SCRRA an opportunity to present a showing as to why it should be removed from the hearing proceeding without affording the Applicants the same opportunity. Critically, this ignores the fact that there is no serious legal foundation for proposing to remove SCRRA from the hearing proceeding in the first place. The Applicants are thus asking, "me, too" with respect to potential relief that should never have been offered in the first place.

Under the longstanding precedent of *Jefferson Radio v. FCC*, 340 F.2d 781 (D.C. Cir. 1964), where a licensee's authorization is revoked or terminated, a pending application to transfer or assign that authorization is precluded. Under such circumstances, "there is no authorization to assign."² The Commission has explained that, "The purpose underlying this policy is obvious: A licensee cannot act inconsistently with the Communications Act or the Commission's rules and policies, and then, when a question is raised concerning such improper activity, transfer or assign the license to another; if he could, the only result of the wrongdoing would be a forced sale."³

The Commission has, under very rare circumstances, determined not to follow this policy due to compelling public interest concerns. Neither SCRRA nor the Applicants have presented a compelling case that would rise to this level – they have not demonstrated that they have any need for a particular amount of spectrum in any particular band, they have not demonstrated that

² *Application of Cathryn C. Murphy, Vancouver, Wash. for Renewal of License of Station KVAN*, Opinion, 42 FCC 2d 346, ¶ 5 (1973).

³ *Harry O'Connor (Transferor) and Wallace Barbee (Transferee) for Acquisition of Positive Control of KGKB, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 2 FCC 2d 45, ¶ 8 (1965).

they are unable to secure access to spectrum elsewhere, and they have not demonstrated that they could not find adequate spectrum by making more efficient use of their current, licensed spectrum (such as through trunked systems, digital equipment, better frequency re-use, or other alternatives). Instead, SCRRA and the Applicants have attempted to manufacture a compelling need for the particular spectrum that is at issue in the Hearing Designation Order, and they hope to gain the benefits of a license assignment without participating in the hearing proceeding that may determine whether Maritime ever had any valid licenses to assign. Further, the Commission has rejected the argument that the innocence of the Applicants is relevant to the threshold determination of the status of the licenses, concluding that:

While the consequences to innocent persons may be unfortunate, it is a fate common to many who associated themselves in business enterprises with persons who are lacking in the affirmative qualifications necessary to be a broadcast licensee. Conversely, persons found to be unfit to be licensees should not be allowed to continue to hold their licenses by associating themselves with persons whose conduct may be above reproach.⁴

The Applicants are free to leave the hearing proceeding and abandon their pursuit of the spectrum at issue, seeking alternative spectrum elsewhere, such as from a licensee that is not under investigation and subject to possible license revocation. They are by no means hostage to the hearing proceeding they find so objectionable. Nevertheless, in their ongoing “I Want What I Want When I Want It” pleadings, the Applicants seek to have their pending assignment applications granted without being bothered by the Commission’s proper processes and procedures.

⁴ *Harvey Wallerstein, Receiver, Television Co. of America, Inc., for Renewal of License of Station KSHO-TV, Las Vegas, NV*, Opinion, 1 FCC 2d 91, ¶ 6 (1965). See also *id.*, citing *WOKO v. FCC*, 329 U.S. 223 at 228 (1946) (denial of application for a license because of the insufficiency or deliberate falsity of the information lawfully required to be furnished is not a “punishment.”)

Setting aside the legal defects with the relief the Applicants seek, their ongoing pursuit of the extraordinary remedy they seek has, by this point, become repetitive and risks wasting Commission resources. The Applicants were entitled to file a Petition for Reconsideration of the Hearing Designation Order on this point. They did so. That petition is currently pending. A continuing barrage of repetitive pleadings on the subject does nothing to further their case, particularly given that the Applicants have nothing substantive to add to what they have already submitted. The Applicants have made their position with respect to their participation in the hearing proceeding abundantly clear, and both SkyTel and the Enforcement Bureau have opposed that position.⁵ If the Applicants have nothing to add, which they apparently do not, they should wait for the outcome of their petition for reconsideration. If they find their participation in the hearing proceeding the Commission ordered intolerable, they should consider withdrawing from the hearing proceeding and simply seeking access to alternative spectrum with which they could pursue their objectives.

⁵ See Enforcement Bureau's Consolidated Opposition to Petitions for Reconsideration, EB Docket No. 11-71 (June 2, 2011); SkyTel Consolidated Opposition to Petitions for Reconsideration, Docket No. 11-71 (June 2, 2011).

Respectfully Submitted,

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July 25, 2011

CERTIFICATE OF SERVICE

I, Patrick R. McFadden, hereby certify that on this 25th day of July, 2011, a true copy of this Opposition was served via first class, postage paid United States Mail upon the following:

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